

Exemption No. 6099

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
RENTON, WASHINGTON 98055-4056**

<p>In the matter of the petition of</p> <p>Boeing Commercial Airplane Group</p> <p>for an exemption from § 21.191(f) of the Federal Aviation Regulations</p>	<p>Regulatory Docket No. 28226</p>
---	---

GRANT OF EXEMPTION

By letter dated May 12, 1995, Mr. William M. Broadhurst, Supervisor, FAA Coordination, Boeing Commercial Airplane Group, The Boeing Company, P.O Box 3707, Seattle, Washington 98124-2207, petitioned for a one time exemption from the Experimental Certificate, Market Survey Category, requirements of § 21.191(f) of the Federal Aviation Regulations (FAR), for a Boeing Model 777 airplane, to allow carriage of persons involved in airplane sales and marketing not allowed under current interpretations of the rule.

Section of the FAR affected:

Section 21.191 states a number of purposes for which experimental certificates are issued. These include research and development, showing compliance with the airworthiness regulations, crew training, and a number of purposes not relevant to this petition. In particular, § 21.191(f) covers the issuance of an experimental certificate for market surveys. Section 21.191(f) defines this purpose as conducting market surveys, sales demonstrations, and customer crew training as provided in § 21.195.

Related sections of the FAR:

Section 21.195(a) states that a manufacturer of aircraft manufactured within the United States may apply for an experimental certificate for an aircraft that is to be used for market surveys, sales demonstrations, or customer crew training. Paragraphs (b) and (c) of this section are not relevant to this petition. Paragraph (d) of this section requires the applicant for an experimental certificate for these purposes to establish an inspection and maintenance program for the

continued airworthiness of the aircraft and to show that it has been flown for a specific number of hours.

Section 91.319(a)(1) states that no person may operate an aircraft that has an experimental certificate for other than the purpose for which the certificate was issued.

The petitioner's supportive information is as follows:

"The Boeing Company hereby requests an exemption from FAR 21.191(f) to allow it to carry persons involved in airplane sales and marketing not allowed under current interpretations of this rule.

"We propose the exemption to read:

"The Boeing Company is hereby granted an exemption from FAR 21.191(f) to allow carriage of persons involved in sales and marketing of transport category airplanes on a Boeing Model 777, airplane tab number WA004, serial number 26929, registration N773UA, while this airplane meets the operational and safety requirements of FAR 91."

"The rationale for this petition is as follows:

"Boeing is currently planning to carry approximately 18 Ministers from the Asian Pacific Economic Council (APEC) and their staff, plus dignitaries and government officials from the United States, on a Boeing Model 777, airplane tab number WA004, serial number 26929, registration N773UA, from Washington D.C. to Seattle, WA via Denver, CO on or about June 14, 1995. This demonstration trip will provide an excellent opportunity to showcase American aerospace products to potential foreign customers and their respective governments.

"We believe that FAR 21.191(f) should be interpreted to allow a properly equipped 777 to carry anyone on this trip who may enhance our ability to sell airplanes. This would include the direct customers, their advisors and financial backers, the government regulators and administrators of the U.S. and customer nations, our vendors and risk sharing partners, members of the press and media, sales and marketing personnel and airplane support personnel.

"We note that current interpretation of FAR 21.191(f) already includes direct customers with no requirement other than that the airplane have either 50 flight hours if a new type design or 5 hours if a modified type design.

"We believe it is prudent to add stipulations that the airplane to be used under this exemption also:

"1. Be a transport category airplane, governed by adequate flight manual equivalent information, including Minimum Equipment List (MEL),

"2. Be properly equipped with operational equipment in compliance with FAR 91 (and ICAO requirements as appropriate), i.e. navigation, communication, etc., and

"3. Be properly equipped with passenger safety equipment in compliance with FAR 91 (and ICAO requirements as appropriate), i.e. oxygen, seats, passenger address, emergency egress provisions, etc.

"With these stipulations, we believe public safety is properly addressed.

"Granting this exemption will be in the public interest by enabling us to compete more competitively with foreign competitors."

The FAA finds, for good cause, that action on this petition should not be delayed by publication and comment procedures for the following reason: (1) although this exemption sets a precedent in that similar exemptions have not previously been issued, the precedent is narrowly limited by the fact that the exemption applies to a single flight to enable carriage of particular individuals under unique circumstances; (2) delay in acting on the petition would clearly be detrimental to the petitioner because publication and comment procedures could not be completed before the scheduled flight; and (3) although the petition was not received until approximately one month before the scheduled flight, the petitioner's delay in submitting the petition is understandable in that it incorrectly considered that this flight would be for purposes of "sales demonstration," and that an exemption was therefore not required.

The FAA's analysis/summary is as follows:

Type Certificate No. T00001SE was issued April 19, 1995, to the Boeing Company for Model 777-200 series airplanes. An airplane that conforms to the type design approved for the Model 777-200 is eligible for issuance of a standard airworthiness certificate and could be used for the petitioner's proposed flight.

The petitioner proposes to use an airplane, serial number 26929, that is not presently eligible for a standard airworthiness certificate because it does not fully conform to the approved type design. The airplane generally does conform to the approved type design; however, it has additional flight test instrumentation and associated test wiring, flight test support equipment, non-production evacuation slides, interior differences, and certain nonconforming parts. None of these differences would affect major flight characteristics or operating systems of the airplane, and none would degrade the level of safety of the airplane. In lieu of a standard airworthiness certificate, an experimental certificate has been issued for this airplane for the purposes of research and development, demonstrating compliance with the regulations, crew training, and market survey. One of the operating limitations associated with this experimental certificate is

that, "No person may be carried in this aircraft during flight unless that person is required for the purpose of the flight."

The petitioner notes that the persons carried on the proposed flight would include Ministers from the Asian Pacific Economic Council (APEC), and their staff, plus dignitaries and government officials from the United States. While the flight may, as the petitioner contends, provide an opportunity to show American aerospace products to foreign customers and their respective governments and thereby promote future sales, the flight would not constitute conducting market surveys, sales demonstrations, or customer crew training as defined by § 21.191(f). Nevertheless, the FAA concurs that the proposed flight would be in the public interest because it would enhance the petitioner's potential for future export sales and thereby create more airplane production jobs within the United States.

The FAA also notes that this flight could not practicably be conducted on a Model 777 airplane having a standard airworthiness certificate. The petitioner has stated that no other Model 777 airplanes, certificated in the standard category, are available to it for this flight. Further, the petitioner has stated, and the FAA agrees, that once it learned that the subject flight did not qualify as a "sales demonstration," the petitioner did not have sufficient time to complete required flight testing and convert the airplane to a configuration that would be eligible for a standard certificate.

Considering the limited scope and nature of the areas in which this airplane does not conform to the approved type design, the FAA concurs that safety would not be enhanced, insofar as the proposed flight is concerned, by modifying it to conform to the approved type design.

Regarding the petitioner's proposed stipulations, the FAA considers that the first two are redundant of provisions already contained in the operating limitations of the airplane's experimental certificate, and are, therefore, unnecessary. Regarding the third, to ensure an acceptable level of passenger safety, the FAA agrees that this exemption must contain a condition requiring compliance with the provisions of Subpart F of part 91 (14 C.F.R. 91.501-91.535), which contains requirements applicable to large and turbine-powered multiengine aircraft, including provisions relating to passenger safety equipment.

In consideration of the foregoing, I find that a grant of exemption is in the public interest, and will not significantly affect the level of safety provided by the regulations. Therefore, pursuant to the authority contained in §§ 313(a) and 601(c) of the Federal Aviation Act of 1958, delegated to me by the Administrator (14 CFR 11.53), the petition of The Boeing Company for exemption from the requirements of Title 14 CFR part 21, § 21.191(f), for the Boeing 777-222 airplane, serial number 26929, is granted subject to the following conditions:

1. This exemption pertains only to a flight from Washington, D.C., to Seattle, Washington, via one or more intermediate stops, on or about June 14, 1995. The flight must be conducted by the petitioner.
2. For this flight, the purpose of issuing an experimental certificate described in § 21.191(f) includes the carriage of Ministers from the Asian Pacific Economic Council and their staff, plus dignitaries and government officials from the United States.
3. For this particular flight only, the persons described above are considered to be "persons required for the purpose of the flight." They may, therefore, be carried under the terms of the experimental certificate presently issued for serial number 26929.
4. All other provisions of the Federal Aviation Regulations pertaining to the issuance of an experimental certificate and operation of an airplane with such a certificate remain applicable.
5. In addition to all other applicable requirements, this flight must be conducted in accordance with Subpart F of part 91 (14 C.F.R. 91.501-91.535).
6. This exemption expires on June 30, 1995.

Issued in Renton, Washington, on June 8, 1995.

/s/ Darrell M. Pederson, Acting Manager
Transport Airplane Directorate
Aircraft Certification Service